

ICWA Notice Checklist

Applicability of ICWA (CRC 1439(b))
<ul style="list-style-type: none"> <input type="checkbox"/> Determine applicability: ICWA applies to: <ul style="list-style-type: none"> <input type="checkbox"/> All dependency proceedings under Welf & I C §300. <input type="checkbox"/> Any delinquency proceedings under Welf & I C §§601 and 602 in which the child is at risk of entering foster care or is in foster care. <input type="checkbox"/> Any voluntary adoption proceedings for relinquishment under Fam C §8700 or for execution of an adoption placement agreement under Fam C §8801.3, as well as some probate and legal guardianship proceedings. <input type="checkbox"/> Duty to inquire: Social services agency or probation and the court have affirmative and continuing duty to conduct ICWA inquiries unless and until court decides ICWA does not apply.
Inquiry Procedure (CRC 1439(d)–(e))
<ul style="list-style-type: none"> <input type="checkbox"/> By social worker: Social worker in dependency case must ask child, if old enough, and parents or guardian whether child may be an Indian child or may have Indian ancestors. <input type="checkbox"/> By probation officer: If probation officer in delinquency case believes child is at risk of entering foster care or is in foster care, officer must ask the child and parents if child is Indian or may have Indian ancestors. <input type="checkbox"/> First appearance: At first appearance in any dependency case, or in any wardship proceedings in which child is at risk of entering foster care, order the parent or guardian to complete form JV-130, <i>Parental Notification of Indian Status</i>. <ul style="list-style-type: none"> <input type="checkbox"/> Also examine petition to see if box is checked that child may be a member or eligible for membership in a tribe, but petitions are often inaccurate. (See form JV-100, <i>Juvenile Dependency Petition (Version One)</i>, box 1(l); form JV-110, <i>Juvenile Dependency Petition (Version Two)</i>, box 1(i); form JV-600, <i>Juvenile Wardship Petition</i>, box 1(m).) <input type="checkbox"/> If petition only indicates that child may be of Indian ancestry, you must give notice to the BIA and make further inquiries about possible Indian status. (See form JV-100, box 1(m); form JV-110, box 1(j); form JV-600, box 1(n).) <input type="checkbox"/> Starting at the initial or detention hearing, determine what inquiries were made and what notices were sent. <ul style="list-style-type: none"> <input type="checkbox"/> If parents state they have Indian heritage, order appropriate notice, by return receipt, to be filed with the court by the jurisdiction hearing. <input type="checkbox"/> Minimal showing: If you know or have any reason to know or suspect that the child may be an Indian child, <i>e.g.</i>, from information in the detention or screening summary or a completed form JV-130, proceed as if the child were an Indian child and send notice.
Notice Procedure (CRC 1439(f))
<ul style="list-style-type: none"> <input type="checkbox"/> Who receives notice: Ensure that notice is sent to: <ul style="list-style-type: none"> <input type="checkbox"/> Parents. <input type="checkbox"/> Indian custodian of an Indian child. <input type="checkbox"/> Indian child's tribe via the tribal chairperson unless the tribe has designated another agent for service. <input type="checkbox"/> All federally recognized tribes of which the child may be a member or eligible for membership (through either side of the family—maternal and paternal). <input type="checkbox"/> Area Director of the BIA if identity or location of the parent or Indian custodian or the tribe cannot be determined. <ul style="list-style-type: none"> <input type="checkbox"/> If BIA is noticed, BIA has 15 days after receipt to give requisite notice to tribes. <input type="checkbox"/> When is notice sent: Whenever you have reason to believe the child may be an Indian child. <input type="checkbox"/> Content of original notice: Ensure that the original notice contains the following: <ul style="list-style-type: none"> <input type="checkbox"/> Copy of the petition. <input type="checkbox"/> Form JV-135, <i>Notice of Involuntary Child Custody Proceedings for an Indian Child</i>, which includes, among other information, the following: <ul style="list-style-type: none"> <input type="checkbox"/> Child's name, birthdate, birthplace, and tribal affiliation.

<ul style="list-style-type: none"> <input type="checkbox"/> Notice of the pending petition. <input type="checkbox"/> Date, time, and place of hearing. <input type="checkbox"/> Notice of rights of the tribe, parents, or Indian custodian to intervene in the proceedings and to request a continuance of up to 20 days to prepare. <input type="checkbox"/> Information about biological parents, grandparents, and great grandparents, both maternal and paternal <input type="checkbox"/> For voluntary adoption proceeding, form ADOPT-226, <i>Notice of Voluntary Adoption Proceedings for an Indian Child</i>. <input type="checkbox"/> How is original notice served: Ensure that notice was given by registered or certified mail with return receipt requested. Recommended that notice also be given by first class mail. <input type="checkbox"/> Subsequent notices: After original notice is sent and a tribe has intervened, notices of subsequent hearings are given on the same forms used to notice other parties, and are served by first class mail. <input type="checkbox"/> Proof of service: Verify that all proofs of notice and copies of notices sent and all return receipts and responses received <i>are filed in the case file</i>.
Specific Hearings
<ul style="list-style-type: none"> <input type="checkbox"/> Initial/Detention Hearing (Welf & I C §§290.1(c), 290.2(c)): <ul style="list-style-type: none"> <input type="checkbox"/> If you know or have reason to know that child is Indian, verify that notice was given as soon as possible after the filing of the petition. <ul style="list-style-type: none"> <input type="checkbox"/> If Indian child in custody, clerk gives notice at least 5 days before hearing, or at least 24 hours if hearing was set to be heard in less than 5 days. <input type="checkbox"/> If Indian child not held in custody, clerk gives at least 10-days' notice, or mails notice at least 10 days before hearing to anyone who resides outside the county. <input type="checkbox"/> Jurisdiction/Disposition Hearings (Welf & I C §291(c)(3)): <ul style="list-style-type: none"> <input type="checkbox"/> If you know or have reason to know that child is Indian, verify that clerk gave at least 10-days' notice whether or not child was detained. <input type="checkbox"/> Review Hearings (Welf & I C §§292(c), 293(c)): <ul style="list-style-type: none"> <input type="checkbox"/> If you know or have reason to know that child is Indian, verify that notice was served no earlier than 30 days nor later than 15 days before the hearing. <input type="checkbox"/> Selection and Implementation/Termination Hearing (Welf & I C §294(c)(2)): <ul style="list-style-type: none"> <input type="checkbox"/> If you know or have reason to know that child is Indian, verify that notice to Indian custodian and tribe was completed at least 10 days before hearing. <input type="checkbox"/> Postpermanency Planning Review Hearing (Welf & I C §295(c)): <ul style="list-style-type: none"> <input type="checkbox"/> If you know or have reason to know that child is Indian, verify that notice was served no earlier than 30 days nor later than 15 days before the hearing.
Determination and Continuance (CRC 1412(i), 1439(f)–(h))
<ul style="list-style-type: none"> <input type="checkbox"/> Determination of Indian status: Tribes determine membership or eligibility. <ul style="list-style-type: none"> <input type="checkbox"/> If tribes were identified and noticed, or no tribe was identified and the BIA was noticed, and after a reasonable time following notice, but not less than 60 days, no determinative response is received from the tribes or the BIA, court may determine that ICWA does not apply unless further evidence is subsequently received. <input type="checkbox"/> Intervention: Federally recognized tribe of an Indian child is entitled to intervene as a party. Tribe may appear by counsel or a tribe representative. <ul style="list-style-type: none"> <input type="checkbox"/> If tribe does not intervene, tribe may still participate in proceedings, and receive and have access to all information. <input type="checkbox"/> Continuance: If ICWA applies, do not proceed at jurisdiction or later hearing until at least 10 days after those entitled to notice have received notice. <ul style="list-style-type: none"> <input type="checkbox"/> If requested, grant the parent, Indian custodian, or tribe a continuance of up to 20 days to prepare.